

Farm Credit Administration

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credit relationship with the Farm Credit bank and the effect such status will have on the provision for payment of the terminating association's debts. The plan of termination shall include evidence of the agreement and plan for satisfaction of outstanding debts, whether contained in a general financing agreement or otherwise.

(f) The proposed effective date of the termination.

§611.1235 Stockholder reconsideration.

(a) Eligible voting stockholders have the right to reconsider the approval of the termination provided that—

(1) A petition signed by 15 percent of the eligible voting stockholders of the association is filed with the association, and a copy of such petition is filed with the Farm Credit Administration, within 35 days after the date of mailing of the notification to stockholders of the final results of the stockholder vote required under §611.1215; and

(2) Such petition is certified by the terminating association as provided in paragraph (b) of this section.

(b) Each petition shall include the signature, printed name and full address of each voting stockholder signing the petition. Within 5 days of its receipt of a timely filed stockholder petition, the association shall certify whether the signatures on the petition are the signatures of persons who were eligible voting stockholders of the terminating association on the voting record date, and the association shall notify the Farm Credit Administration of such certification.

(c) The petition shall include the name and address of a person who shall serve as petitioners' representative and who shall represent the interests of the petitioners in the reconsideration vote process.

(d) If the terminating association certifies that at least 15 percent of eligible voting stockholders have signed the petition, a special stockholders' meeting shall be called by the association to vote on the reconsideration. Such meeting shall be held within 60 days after the date on which the stockholders were notified of the final result of the termination vote. If a majority

of stockholders of the association voting in person or by written proxy vote against the termination, the termination is not approved. If a majority of stockholders of the association voting in person or by written proxy do not vote against the termination, the termination shall be effective pursuant to the provisions of §611.1215(f), but not less than 15 days after the reconsideration vote.

(e) The petitioners, through the petitioners' representative, and board of directors of the terminating association shall each have the opportunity to present to the stockholders and other equity holders a written statement of their views regarding the reasons for calling a reconsideration vote. Such statements shall be reasonable in length and shall be mailed to stockholders and other equity holders along with the notice of stockholders' meeting for the reconsideration vote.

(f) The terminating association shall, at its expense, immediately provide the stockholders initiating the petition with a list of the names and addresses of all of the eligible voting stockholders of the association. All other expenses for the petition shall be borne by the petitioners. Reasonable expenses for the reconsideration vote shall be borne by the terminating association.

§611.1240 Exit fee.

(a) For the purposes of this section, the following definitions apply:

(1) *Assets* means all assets less appropriate valuation reserves as determined in accordance with GAAP except where otherwise noted in this section.

(2) *Contingent liabilities* means those liabilities that, in accordance with GAAP, will materialize if certain events occur.

(3) *Total capital* means all capital stock, surplus and undivided profits accounts as determined in accordance with GAAP, except where otherwise noted in this section, and as adjusted pursuant to the requirements of §611.1240.

(b) A terminating association shall pay an exit fee equal to the amount by which the total capital of the association exceeds 6 percent of its assets. The

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exit fee shall be paid to the Farm Credit Assistance Fund if the effective date of termination is prior to January 1, 1992 or to the Farm Credit Insurance Fund if the effective date is after that date.

(c) The computation date for the exit fee shall be the quarter end preceding the filing date. A certified audit of the terminating association shall be performed by a qualified public accountant, as defined in § 621.2(i), as of the computation date. The Farm Credit Administration may, in its complete discretion, waive this requirement if such an audit was performed as of a date within the 6 months preceding the computation date.

(d) The method of computation shall be as follows:

(1) The average daily balance of assets and total capital for the past 12 months preceding the computation date will be computed as a basis for determining the exit fee; and

(2) Account balances shall be computed in accordance with GAAP and adjusted in accordance with paragraphs (e), (f), (g), and (h) of this section.

(e) For purposes of determining the amount of the exit fee, the Farm Credit Administration will review the terminating association's transactions over a 3-year period prior to the date of the adoption of the termination resolution. If this review determines that the terminating association's account balances do not accurately reflect the value of its assets and liabilities, or that the association has retired capital outside the ordinary course of business, or that the association has taken any other actions unrelated to its core business that have the effect of increasing or decreasing the amount of the exit fee, the Farm Credit Administration may make adjustments to the association's assets, liabilities, or capital and recompute the exit fee based on these adjustments. The review by the Farm Credit Administration shall include, but not be limited to:

(1) Additions to or subtractions from the allowance for loan losses;

(2) Additions to assets from transactions that are outside the terminating association's ordinary course of business;

(3) Dividends or patronage refunds exceeding the terminating association's usual practices;

(4) Changes in the terminating association's capitalization plan or implementation of that plan that increased or decreased the level of borrower investment;

(5) Contingent liabilities, such as loss-sharing obligations, that can be reasonably quantified; and

(6) Assets that may be overvalued, undervalued or not recorded on the books of the association.

(f) Capital of the terminating association owned by another Farm Credit institution or by the Financial Assistance Corporation shall not be included in capital for the purpose of determining the exit fee.

(g) In the event that GAAP requires that a liability be recorded on the balance sheet that will be offset by an unrecorded asset, the transaction recording the liability shall be reversed.

(h) In the event the terminating association has recorded expenses that would not have been recorded but for the termination, such transactions shall be reversed.

(i) The exit fee shall be paid by certified check, or other means agreed upon by the Farm Credit Administration and the terminating association.

[56 FR 3407, Jan. 30, 1991, as amended at 58 FR 48790, Sept. 20, 1993]

§ 611.1250 Repayment of debts.

(a) The terminating association shall provide for the payment or assumption by the successor institution of all outstanding debt obligations.

(b) The terminating association may establish and maintain an OFI relationship with the Farm Credit Bank or agricultural credit bank, subject to all applicable requirements of part 614, subpart P, of this chapter. The general financing agreement establishing the OFI relationship shall provide for the assumption by the successor institution of any direct loan or other obligation that a production credit association is authorized to incur and that is not repaid at the time of termination. Any part of the direct loan or other obligation that is not linked to a loan